

UNPUBLISHED

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff-Appellee.

v.

No. 99-4658

MICHAEL WILLIAMS,
Defendant-Appellant.

Appeal from the United States District Court
for the Middle District of North Carolina, at Durham.
Frank W. Bullock, Jr., District Judge.
(CR-99-17)

Submitted: May 10, 2000

Decided: June 6, 2000

Before MICHAEL and TRAXLER, Circuit Judges,
and HAMILTON, Senior Circuit Judge.

Dismissed by unpublished per curiam opinion.

COUNSEL

J. Clark Fischer, RANDOLPH & FISCHER, Winston-Salem, North
Carolina, for Appellant. Walter C. Holton, Jr., United States Attorney,
Sandra J. Hairston, Assistant United States Attorney, Greensboro,
North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

OPINION

PER CURIAM:

Michael Williams pleaded guilty to one count of distribution of crack cocaine, in violation of 21 U.S.C.A. § 841(a)(1) (West Supp. 2000). He now appeals his 151-month sentence. We dismiss the appeal.

Williams' sole argument on appeal is that the district court erred when it denied his motion for downward departure. Williams contends that the presentence report over-represented his criminal history, which consisted of a number of relatively minor offenses committed at a young age. A district court's decision not to depart from the sentencing guidelines is not subject to appellate review unless the refusal to depart is based on the mistaken belief that the court lacked the authority to depart. *See United States v. Bayerle*, 898 F.2d 28, 30-31 (4th Cir. 1990). The sentencing transcript reflects that the district court clearly recognized that it could depart, but declined to do so for a number of reasons. Therefore, under *Bayerle*, we dismiss Williams' appeal for lack of jurisdiction.

We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

DISMISSED

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